

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-9870-2014 (O&M)
Date of Decision: 10.10.2018

Smt. Ram Bhateri & others

--Appellants

Versus

Kapoor Singh & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Kuldeep Khandelwal, Advocate for the appellants.

Mr. V. Ramswaroop, Advocate for respondent no.2.

TEJINDER SINGH DHINDSA.J (Oral)

Claimants have filed the instant appeal assailing the order dated 22.8.2014 passed by the Motor Accident Claims Tribunal, Hisar (herein after to be referred to as the Tribunal) and in terms of which a claim petition filed by them under Section 166 of the Motor Vehicle Act seeking compensation to the tune of Rs.60 lacs on account of death of Jaipal Singh in a motor vehicle accident that took place on 1.3.2013, has been dismissed.

Briefly noticed, a claim petition had been preferred by the widow, aged parents and two minor children of deceased Jaipal Singh.

The case set up in the claim petition was that on 1.3.2013 at about 9 P.M deceased Jaipal Singh was pillion riding on a motorcycle bearing registration no. HR-20T-3379 and which was being driven by Kapoor Singh son of Manphool Singh in a rash and negligent manner and at a very high speed. The motorcycle got unbalanced while crossing a speed breaker and thereafter struck against a cow. In such accident Jaipal Singh suffered injuries and to which he succumbed on the same very day. As per claimants accident had been witnessed by Dharambir son of Ram Niwas and Rajesh Kumar son of Jagan Nath. Further stand taken was that the police

authorities had been duly informed regarding the accident but no FIR had been lodged for the reason that the driver of the offending/insured motorcycle was a police personnel himself.

Perusal of the impugned order passed by the Tribunal reveals that respondent no.1/Kapoor Singh on the date of accident i.e. 1.3.2013 itself had got recorded a DDR Ex.P-2 carrying a version that at about 9 P.M while he was coming from Nagori Gate, Hisar, he noticed his colleague Jaipal Singh, EHC (since deceased) standing on the right side and called upon him to accompany him. Thereafter, while Jaipal Singh was pillion riding and the motorcycle reached near Yadav Dharamshala, Barwala Road, two bulls were fighting and in order to save himself the motorcycle got unbalanced on account of which Jaipal Singh fell down and his head struck on the road. As per DDR Jaipal Singh was rushed to General Hospital, Hisar in an ambulance but was declared dead upon arrival.

The Tribunal while dismissing the claim petition has been swayed by the fact that appellant/claimant no.1 Smt. Ram Bhateri had moved an application dated 11.4.2013 (Ex.P-1) i.e. after a delay of one month and 14 days from the date of accident to the Superintendent of Police, Hisar claiming that Jaipal Singh had received injuries on account of an accident due to rash and negligent driving of Kapoor Singh. Apparently, in an investigation that ensued, statements of Dharambir son of Ram Niwas and Rajesh Kumar son of Jagan Nath were recorded and in such statement both the afore-noticed did not state that Kapoor Singh was driving the offending motorcycle in a rash or negligent manner.

In a nutshell the version set forth by the widow/claimant/appellant no.1 Smt. Ram Bhateri as regards rash and

negligent driving on the part of Kapoor Singh has been discarded primarily on the issue of delay that had occurred in filing the application to the Superintendent of Police, Hisar. In other words, the version as contained in the DDR at the instance of the driver of the motorcycle namely Kapoor Singh has been accepted.

Undoubtedly, a finding with regard to rash and negligent driving by the driver of the offending/insured vehicle would be a prerequisite to entertain a claim petition under Section 166 of the Motor Vehicle Act.

Counsel representing the claimants has placed reliance upon a judgement rendered by a Coordinate Bench of this Court in ***Harmesh Kumar @ Ramesh Kumar Vs. Inderjit Singh and others, 2014(3) R.C.R (Civil), 408***, wherein also an accident had purportedly taken place in an attempt to avoid hitting stray cattle and the following observations were made:-

“Consequently, yet another claimant would always have a right to contend that the drivers of the respective vehicles had been negligent in not being tactful to avoid hitting a cattle and still save themselves from the situation of a collision. All accidents have a latent quality of want of care in some way. Negligence cannot be attributed to any person other than a human agency. A driver or passenger cannot say that an animal was negligent for it is illogical and does not come within the realm of legal reasoning. The reasoning is that any person that drives must factor his own driving skills and not looking for excuses of how another agency that is not human has created a situation that had diminished his own driving skills. Mechanical failure or nature's intervention are different and wherever such factors raised, they must be pleaded and proved. That is how we must approach an issue where a cattle crosses the road.”

Keeping in view the observations reproduced herein above, the finding with regard to rash and negligent driving, if at all, at the hands of respondent no.1 Kapoor Singh, driver of the offending/insured motorcycle would require to be re-examined by the Tribunal. It is a case where the matter would require to be remanded back to the Tribunal for examination afresh.

Even learned counsel representing the contesting respondent-Insurance Company does not oppose such course of action to be followed.

In view of the discussion above, the impugned order dated 22.8.2014, passed by the Tribunal, is set aside.

Matter is remanded back to the Tribunal for a decision afresh. Parties are directed to appear before the Tribunal on 19.11.2018.

It is, however, clarified that this Court has not examined the claim of the appellants herein on merits.

Appeal is disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

10.10.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No